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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC., *Plaintiff, Counter-defendant,* v. APPLE INC., *Defendant, Counterclaimant.*	Case No. 4:20-cv-05640-YGR
IN RE APPLE IPHONE ANTITRUST LITIGATION	Case No. 4:11-cv-06714-YGR
DONALD R. CAMERON, *et al.*, *Plaintiffs,* v. APPLE INC., *Defendant.*	Case No. 4:19-cv-03074-YGR **JOINT STIPULATION AND** [~~PROPOSED~~] **ORDER RE: VALIDATION PROTOCOL** Judge: Hon. Yvonne Gonzalez Rogers; Hon. Thomas S. Hixson

JOINT STIPULATION AND [~~PROPOSED~~] ORDER RE: VALIDATION PROTOCOL
CASE NOs. 4:11-cv-06714-YGR-TSH; 4:19-cv-03074-YGR-TSH; 4:20-cv-05640-YGR-TSH

1   Plaintiff Epic Games, Inc. ("Epic"), the Developer Plaintiffs, the Consumer Plaintiffs

2 and Defendant Apple Inc. ("Apple") (collectively, "the Parties," and individually, a "Party")

3 submit the following protocol to govern the use and validation of the Parties' respective

4 document culling and review efforts.

5 <u>Validation of Apple's TAR Process</u>

6   1. Apple is using Technology Assisted Review ("TAR") to select the documents that will

7   be subject to human review or produced without human review. The steps described in

8   the following paragraphs 2 through 7 shall be completed separately for the following

9   document populations (a) and (b): (a) Apple's total TAR population comprised of (i) the

10   documents collected by Apple for the custodians and time periods identified initially in

11   the class action cases ("Apple's Class Action Collection") and (ii) the documents

12   collected by Apple for the custodians added following the filing of the *Epic* litigation,

13   as well as the documents collected by Apple for additional time periods for certain class

14   action custodians ("Apple's *Epic* Collection"); and (b) Apple's *Epic* Collection alone.

15   2. At the substantial completion of its TAR process, Apple shall disclose the number of

16   documents to which the TAR process has been applied, the number of documents either

17   reviewed or produced without human review as a result of its TAR process, and the

18   number of documents excluded from human review and production based on its TAR

19   process.

20   3. Apple shall gather: (1) a random sample of 500 documents from those produced or

21   withheld as privileged (the "Reviewed Responsive/Produced Documents"); (2) a

22   random sample of 500 documents from those unproduced documents identified as non-

23   responsive during the course of the review (the "Unproduced Reviewed Nonresponsive

24   Documents"); and (3) a random sample of 500 documents from those unproduced

25   documents that were unreviewed at the time of validation (the "Unreviewed

26   Documents") (collectively, these samples are the "TAR Validation Samples").

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4. The TAR Validation Samples shall be coded by an SME, *i.e.*, an attorney employee of outside counsel, who is knowledgeable about the subject matter of the litigation and assigned to work on the above-captioned cases. For purposes of the SME's validation review, the SME will not be provided with any information regarding how any document in the TAR Validation Samples was initially categorized during the course of the review.

5. The estimated recall of the review will then be calculated as follows: the total number of documents produced or withheld as privileged that were correctly identified as responsive, divided by the sum of: (1) the total number of documents produced or withheld as privileged that were correctly identified as responsive; (2) the number of unproduced reviewed documents incorrectly marked nonresponsive; and (3) the number of unproduced unreviewed but responsive documents. For purposes of the foregoing recall calculation: (1) the total number of documents produced or withheld as privileged that were correctly identified as responsive will be calculated by multiplying the number of documents produced or withheld as privileged by the percentage of the 500 Reviewed Responsive/Produced Documents that were responsive (as determined by the SME); (2) the unproduced reviewed documents incorrectly marked nonresponsive will be calculated by multiplying the total number of documents marked as nonresponsive by the percentage of the 500 Unproduced Reviewed Nonresponsive Documents that were incorrectly marked as nonresponsive (as determined by the SME); and (3) the unproduced unreviewed but responsive documents will be calculated by multiplying the total number of unproduced unreviewed documents by the percentage of the 500 Unreviewed Documents subsequently coded responsive by the SME.

6. In calculating recall, Apple shall not consider in its calculation any set of documents it reasonably expects to constitute 2% or more of documents produced from the universe of documents to which TAR was applied that comprises (a) duplicates or near duplicates of one another; (b) documents automatically generated by the same or similar

JOINT STIPULATION AND [~~PROPOSED~~] ORDER RE: VALIDATION PROTOCOL
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1   source; (c) documents automatically sent from the same or similar sender; or (d) any

2   other category of documents identified as responsive on a categorical basis.

3   7. Apple shall provide the other Parties with the recall calculations based on its TAR

4   Validation Samples. For Apple, a recall rate of 70% (75% with respect to Apple's *Epic*

5   Collection), as confirmed by an SME shall be considered presumptively acceptable, and

6   if another Party believes that additional documents should be produced after a 70%

7   recall rate (75% with respect to Apple's *Epic* Collection) is achieved and confirmed by

8   an SME, that Party must make a detailed showing as to how the probative value

9   outweighs the burden of further document review. If a recall rate of 70% (75% with

10   respect to Apple's *Epic* Collection) is not achieved by Apple, Apple shall continue to

11   produce documents until a further validation test adhering to the above requirements

12   confirms that 70% (75% with respect to Apple's *Epic* Collection) recall has been

13   achieved, unless otherwise agreed to by the Parties.

14 8. If Apple has previously validated a document production as described above and

15   achieved the designated recall objective, Apple need not repeat validation of that

16   production unless any changed circumstances (such as the additional collection of

17   documents) are mathematically significant enough potentially to cause Apple to fail to

18   reach the designated recall objective with respect to that document production.

19 Validation of Epic's Linear Review Process

20 9. Epic is using linear review of documents that hit on agreed upon search terms to

21   identify documents responsive to requests for production served on it. At the

22   substantial completion of its linear review process, Epic shall disclose the number of

23   documents that hit on the agreed search terms, the number of documents produced or

24   withheld as privileged, and the number of documents identified as non-responsive

25   during the course of the review.

26 10. Epic shall gather: (1) a random sample of 500 documents from those produced or

27   withheld as privileged (the "Reviewed Responsive/Produced Documents"); and (2) a

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1   random sample of 500 documents from those unproduced documents identified as non-

2   responsive during the course of the review (the "Unproduced Reviewed Nonresponsive

3   Documents") (collectively, these samples are the "Epic Validation Samples").

4   11. The Epic Validation Samples shall be coded by an SME, *i.e.*, an attorney employee of

5   outside counsel, who is knowledgeable about the subject matter of the litigation and

6   assigned to work on the above-captioned cases. For purposes of the SME's validation

7   review, the SME will not be provided with any information regarding how any

8   document in the Epic Validation Samples was initially categorized during the course of

9   the review.

10   12. The estimated recall of the review will then be calculated as follows: the total number

11   of documents produced or withheld as privileged that were correctly identified as

12   responsive, divided by the sum of: (1) the total number of documents produced or

13   withheld as privileged that were correctly identified as responsive; and (2) the number

14   of unproduced reviewed documents incorrectly marked nonresponsive. For purposes of

15   the foregoing recall calculation: (1) the total number of documents produced or

16   withheld as privileged that were correctly identified as responsive will be calculated by

17   multiplying the number of documents produced or withheld as privileged by the

18   percentage of the 500 Reviewed Responsive/Produced Documents that were responsive

19   (as determined by the SME); and (2) the unproduced reviewed documents incorrectly

20   marked nonresponsive will be calculated by multiplying the total number of documents

21   marked as nonresponsive by the percentage of the 500 Unproduced Reviewed

22   Nonresponsive Documents that were incorrectly marked as nonresponsive (as

23   determined by the SME).

24   13. In calculating recall, Epic shall not consider in its calculation any set of documents it

25   reasonably expects to constitute 2% or more of documents produced that comprises (a)

26   duplicates or near duplicates of one another; (b) documents automatically generated by

27   the same or similar source; (c) documents automatically sent from the same or similar

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JOINT STIPULATION AND [~~PROPOSED~~] ORDER RE: VALIDATION PROTOCOL
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sender; or (d) any other category of documents identified as responsive on a categorical

basis.

14. Epic shall provide the other Parties with the recall calculations based on the Epic

Validation Samples. A recall rate of 75% as confirmed by an SME shall be considered

presumptively acceptable, and if another Party believes that additional documents

should be produced after a 75% recall rate is achieved and confirmed by an SME, that

Party must make a detailed showing as to how the probative value outweighs the burden

of further document review. If a recall rate of 75% is not achieved, Epic shall produce

documents until a further validation test adhering to the above requirements confirms

that 75% recall has been achieved, unless otherwise agreed to by the Parties.

Parties Exempted from Validation

15. A Party is not obligated to conduct validation if it has conducted exhaustive linear

review of every document in its document collection, which does not exceed 2500

documents.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

1	Dated: December 14, 2020	CRAVATH, SWAINE & MOORE LLP

Dated: December 14, 2020   CRAVATH, SWAINE & MOORE LLP
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JOINT STIPULATION AND [PROPOSED] ORDER RE: VALIDATION PROTOCOL
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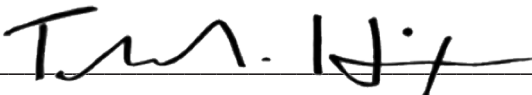   Ethan D. Dettmer
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: __December 15, 2020__   _____

                          THE HONORABLE UNITED STATES
                          MAGISTRATE JUDGE THOMAS S. HIXSON

E-FILING ATTESTATION

      I, Jay Srinivasan, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

                          _____
                             /s/ Jay P. Srinivasan
                             Jay P. Srinivasan

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JOINT STIPULATION AND [PROPOSED] ORDER RE: VALIDATION PROTOCOL
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